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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/530,351
Filing Date: April 06, 2005
Appellant(s): BOUCHERIE, BART GERARD

Patrick Buechner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 14 July 2008 appealing from the Office action mailed 15 February 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUNDS OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. Appellant is not appealing any of the rejections of the dependent claims made under 35 USC 103.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 01/70311 (Chiba), using translation of the related document JP 2001-259031

5782803 Jentzen 07-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chiba (WO 01/70311), using a translation of the related document JP 2001-259031. Regarding Claim 1, Chiba shows that it is known to carry out a method of manufacturing plungers for medical syringes (para. 0001), said plunger comprising at least two parts including a longitudinal plunger body (Figure 1, element 5) made of plastic and a piston body provided at the front end of the plunger body (Figure 1, element 6), which piston body comprises a plastic which is softer than the plastic of the plunger body (para. 0011-0013), wherein said plunger or at least part of the plunger is formed by first manufacturing the piston and then the plunger body by means of injection molding, and wherein the plunger body is injected against the piston body, the piston having a front side and a side wall and being formed free of any flash lines (Figure 1; para. 0016-0018).

Regarding Claim 3, Chiba shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the piston body and the plunger body are connected solely by adhesion between the plastics out of which they are made, without any meshing parts (Figure 1, para 0018).

Regarding Claim 4, Chiba shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein at least one inwardly directed part is formed on the piston body and use is made during injection molding of a mold part having a protruding part in which one or several lateral recesses are provided, such that the mold part may be removed from the piston body due to the elastic flexibility of the piston body (Figure 5; para. 0002-0004; it is interpreted that the mold part will be the negative image of the molded body- when the piston has a inwardly directed part, the mold part will have a protrusion to form the inwardly directed part).

Regarding Claim 5, Chiba shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the plastic forming the piston body is provided in a respective mold cavity via the back side of the piston body to be formed (Figure 2(c)).

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Jentzen (U.S. Patent 5,782,803). Jentzen shows that it is known to carry out a method for manufacturing plungers for medical syringes having at least a piston body comprising forming a part of the piston body at the location of the piston body which protrudes frontally from a front side of the piston body and which, when the plunger is located in a syringe, can penetrate at least partially through an outlet of the syringe (Figures 4-6; Column 3, lines 41-50), wherein the piston body part is formed of a material which is different from the material of the piston body, and herein the materials for forming the piston body and the protruding portion are formed with known processes (e.g. injection) such that the piston body can be made in one piece with a plunger body belonging to the plunger (Figure 7, element 300, 202).

(10) Response to Argument

(Claim 1- Heading (C))

Applicant contends that Chiba does not show the claimed invention because he does not show molding a plunger body against a piston body. This is not persuasive because, even as applicant points out, paragraph [0019] discloses that the gasket 6 (i.e. the claimed piston) is provided in the mold before the material is injected that forms the plunger 5. Therefore, since the gasket 6 is in the mold before the material is injected that forms the plunger 5, the plunger 5 will be molded against the gasket 6 (i.e. piston body). It is maintained that Chiba shows this aspect of the claimed invention.

Applicant also contends that Chiba does not show the claimed invention because he does not show forming a piston free of any flash lines and/or gate points for the plastic. This is not persuasive because Figure 1 of Chiba clearly shows a gasket 6 (i.e.

piston body) that is free from any flash lines and/or gate points for the plastic. Although Figures 2(a)-2(c) show a gasket 6 (i.e. piston body) having a gate point, this gate point is removed to the extent that the resulting gasket, shown in Figure 1, is free from any flash lines or gate points. Note that the claim does not require the piston to be free of any flash lines and/or gate points as it exits the die, for example, but the claim only requires the piston being free from flash lines and/or gate points. It is therefore interpreted that as long as the final form of the molded gasket 6 (i.e. piston body) is free from flash lines and/or gate points, Chiba's gasket 6, as shown in Figure 1, meets the claimed limitation. The claim does not preclude a finishing step that would remove any flash lines or gate points resulting from the molding process.

(Claim 16- Heading (D))

Applicant contends that Jentzen does not show the claimed invention because he does not show a protruding piston body being formed from a different material than the piston body. Applicant contends that Figures 4-6 do not show the claimed configuration. This is not persuasive because the examiner did not rely on Figures 4-6, an alternate embodiment, to show the claimed limitation. In the rejection, the examiner clearly refers to Figure 7, also an alternate embodiment of Jentzen's invention. In Figure 7, the two different materials of the piston 300 and the protruding piston body 202 are noted by the different cross-hatching of the two elements. Also see Column 3, lines 42-51 for a general discussion on different materials used for the piston 300 versus the plunger 200. Figure 7 is described at Column 5, lines 6-21. A discussion of the element 202, considered to be the protruding piston body, occurs at Column 5, lines 11-12, 17-18, or 20. Although Jentzen sometimes refers to 202 as the plunger end, it is being interpreted that since it protrudes from the piston body, it can and is reasonably be considered a protruding piston body that is made from a different material as the piston.

Applicant also contends that Jentzen does not show the claimed invention because he does not show forming the piston body and protruding part by injecting the

materials against each other such that the piston body is made in one piece with a plunger body of a plunger. Applicant seems to argue that since there is an alleged deficiency with Jentzen not showing two materials, as previously discussed, Jentzen cannot show the injection of each material, instead of pointing out where Jentzen does not show injection molding of each part.

As noted in the previous paragraph, it is maintained that Jentzen does show a piston and protruding piston body made of two different materials. Applicant admits on page 16 of the Brief that in Figure 7, the element 300 is a separate element from element 202. Jentzen teaches injection molding of his plunger element 200 (Column 3, lines 46-50) and the piston element 300 is made (e.g. molded) of an elastomeric material (Column 3, lines 44-45). At Figure 7 and Column 5, lines 15-16, Jentzen notes that the piston 300 is in a recess, not easily available or accessed, and surrounded by element 200. Using these teachings, it follows that the material for the plunger can reasonably be injection molded against and around the piston material, to meet the claimed "injected against one another", in order for the piston and plunger bodies to be made in one piece, i.e. contained within one piece.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Monica A Huson/

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